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§ 1427.1208 Payment.

(a) Payments under this subpart will be determined by multiplying:

(1) The payment rate, determined under § 1427.127, by

(2) The net weight (gross weight minus the weight of bagging and ties) determined under paragraph (b) of this section, of eligible ELS cotton bales that an eligible domestic user opens or an eligible exporter exports during the Friday through Thursday period following a week in which a payment rate is established.

(b) For the purposes of this subpart, the net weight will be based upon:

(1) For domestic users, the weight on which settlement for payment of the ELS cotton was based (landed mill weight);

(2) For exporters, the shipping warehouse weight or the gin weight if the ELS cotton was not placed in a warehouse, of the eligible cotton unless the exporter obtains and pays the cost of having all the bales in the shipment reweighed by a licensed weigher and furnishes a copy of the certified weights.

(c) For the purposes of this subpart, eligible ELS cotton will be considered:

(1) Consumed by the domestic user on the date the bale is opened for consumption; and

(2) Exported by the exporter on the date that CCC determines is the date on which the cotton is shipped for export.

(d) Payments under this subpart will be made available upon application for payment and submission of supporting documentation, as required by this subpart, CCC instructions, and the ELS Cotton Domestic User/Exporter Agreement.

[70 FR 67343, Nov. 7, 2005, as amended at 80 FR 139, Jan. 2, 2015]

PART 1429—ASPARAGUS REVENUE MARKET LOSS ASSISTANCE PAYMENT PROGRAM

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AUTHORITY: 15 U.S.C. 714b and 714c, and Sec. 10404, Pub. L. 110–246, 122 Stat. 2111.

SOURCE: 76 FR 6316, Feb. 4, 2011, unless otherwise noted.

§ 1429.101 Applicability.

(a) The regulations in this part are applicable to program applicants who produced both 2003- and 2007-crop asparagus. Asparagus producers may apply to the Commodity Credit Corporation (CCC) for a payment based on the actual quantity of their 2003 asparagus production and their share of that production.

(b) Total payments made through the Asparagus Revenue Marketing Loss Assistance Payment Program will not exceed \$15 million, allocated as \$7.5 million for fresh asparagus and \$7.5 million for processed asparagus, less any reserve allocated for disputed claims.

§ 1429.102 Administration.

(a) The Asparagus Revenue Market Loss Assistance Payment Program will be administered under the general supervision of the Executive Vice President, CCC (Administrator, Farm Service Administration (FSA)), or a designee, and will be carried out in the field by FSA State and county committees and FSA employees.

(b) FSA State and county committees, and representatives and employees of those committees, do not have the authority to modify or waive any of the provisions of this part, except as provided in paragraph (e) of this section.

(c) The FSA State committee will take any action required by this part that has not been taken by the FSA county committee. The FSA State committee will also:

(1) Correct or require correction of an action taken by an FSA county committee that is not in compliance with this part; and

(2) Require an FSA county committee to not take an action or implement a decision that is not in compliance with the regulations of this part.

(d) No delegation in this part to an FSA State or county committee will preclude the Executive Vice President, CCC, or a designee, from determining any question for the Asparagus Revenue Marketing Loss Assistance Payment Program, or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize FSA State and county committees to waive or modify program requirements that are not statutory in cases where failure to meet such requirements does not adversely affect the operation of the Asparagus Revenue Market Loss Assistance Payment Program.

§ 1429.103 Definitions.

The following definitions apply to this part. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

Application means the Asparagus Revenue Market Loss Assistance Payment Program application form approved for use in this program by CCC and any required accompanying information or documentation.

Application period means the 60-day period established by the Deputy Administrator for producers to apply for the Asparagus Revenue Marketing Loss Assistance Payment Program.

Asparagus producer means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity, as defined in §1400.3 of this chapter, who is an owner, operator, landlord, tenant, or sharecropper, who directly or indirectly, as determined by the Secretary, shares in the risk of producing asparagus and who is entitled to ownership share in the asparagus crop available for marketing from the farm operation. Growers producing asparagus under contract for crop owners are not considered asparagus producers unless the grower can be determined to have an ownership share of the crop.

Base period means the 2003 crop year of asparagus.

County office means the FSA office responsible for administering CCC programs located in a specific area in a State.

Crop year means the marketing season or year as defined by the National Agricultural Statistics Service (NASS).

Department or USDA means the U.S. Department of Agriculture.

Determined production means, with respect to the base period, the total amount of fresh and processed asparagus specified on the application for payment verified by CCC as having been produced and marketed by the producer in the base period.

Farm Service Agency or FSA means the Farm Service Agency of the U.S. Department of Agriculture.

Fresh asparagus means domestically-produced asparagus that, regardless of intended use, was marketed as a fresh product without any processing other than cleaning, grading, sorting, trimming, drying, cooling, and packing.

Hundredweight or cwt. means 100 pounds.

Processed asparagus means domestically-produced asparagus that, regardless of intended use, was marketed as frozen, canned, pickled, or otherwise treated or handled in such fashion that the buyer would not consider the asparagus to be consumed as fresh, as determined by CCC.

Reliable production records means evidence provided by the producer to the FSA county office that FSA determines is adequate to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements, deposit slips, register tapes, invoices for custom harvesting, records to verify production costs, contemporaneous measurements, truck scale tickets, and contemporaneous diaries. When the term "acceptable production records" is used in this rule, it may be either reliable or verifiable production records, as defined in this section.

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Reported production means the total amount of fresh and processed asparagus produced and marketed by a producer, as specified by a producer on the application for payment.

United States means the 50 States of the United States, the District of Columbia, and Puerto Rico.

Verifiable production records means evidence that is used to substantiate the amount of production reported and that can be verified by FSA through an independent source.

§ 1429.104 Application requirements.

(a) To be eligible for payment, asparagus producers must submit a completed application for payment and meet other eligibility requirements as specified in this part. Asparagus producers may obtain an application in person, by mail, by telephone, or by facsimile from any FSA county office. In addition, applicants may download a copy of the application from <http://www.sc.egov.usda.gov>.

(b) An application for payment must be submitted on a completed application form. Applications and any other supporting documentation must be submitted to the FSA county office serving the county in which the producer produced asparagus in 2003 unless the producer now resides in a different county than the county in which asparagus was produced in the base period.

(c) Asparagus producers who apply for payment must certify the information on the application before the application will be considered complete. Applications may be accompanied by acceptable production records for all fresh and processed asparagus produced and marketed from the farm in the 2003 crop year. Producers must certify they had a share interest in both 2003 and 2007 crop asparagus. To be eligible for payment on asparagus produced in the base period, the producer must have produced asparagus in 2007 for the commercial market in commercial quantities as determined for this purpose by the Deputy Administrator. At any time CCC deems appropriate, either before or after payment issuance, CCC may, at its discretion, require a producer to provide documentation to support:

(1) Reported production of 2003 crop fresh or processed asparagus produc-

tion or both entered on the application accompanied by acceptable production record,

(2) Share percentage of 2003 crop production by marketing category for each producer in the asparagus farm operation, or

(3) Any other eligibility requirement specified in this part including commercial quantities of 2007 production to meet the 2007 production requirement.

(d) Each asparagus producer who signs the application must certify the accuracy and truthfulness of the information in the application and any supporting documentation. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program payments will not be approved. Providing a false certification may be punishable by imprisonment, fines, and other penalties or sanctions.

(e) Data furnished by the applicants will be used to determine eligibility for program payments. Although participation in the Asparagus Revenue Market Loss Assistance Payment Program is voluntary, program payments will not be provided unless the participant furnishes a complete application by the end of the application period with all requested data.

(f) Individuals or entities who submit applications after the application period are not entitled to any payment consideration or determination of eligibility. Regardless of the reason why an application is not submitted to or received by the FSA county office, any late application will be considered as not having been timely filed and the applicants on that application will not be eligible for the Asparagus Revenue Marketing Loss Assistance Payment Program.

§ 1429.105 Producer eligibility requirements.

(a) To be eligible to receive the Asparagus Revenue Marketing Loss Assistance Payment Program payments, asparagus producers must submit an application during the application period and must:

(1) Have produced and marketed asparagus in commercial quantities in commercial markets in the United States during both of the 2003 and 2007 crop years;

(2) Be an asparagus producer, as defined in § 1429.103, for the 2003 and 2007 crop years;

(3) Certify their shares and the pounds of fresh and processed asparagus produced and marketed from the farm operation during the 2003 crop year as reflected on the application;

(4) If the total value of payments claimed exceeds the available funding, have an average adjusted gross income (AGI) of less than \$2.5 million for the 3 tax years of 2003 through 2005; and

(5) Be in compliance with the requirements in 7 CFR part 12 regarding highly erodible cropland and wetlands and meet any general farm program eligibility requirements that apply under 7 CFR part 1400 or other regulations as applicable.

(b) Asparagus producers must sign an application to be considered for payment eligibility. Asparagus producers who do not sign an application will not receive payment or a determination of eligibility, even if other producers in the asparagus farm operation sign an application and receive payment.

(c) Each applicant determined by spot check or other information to not have an interest as an asparagus producer in 2003 and 2007 who meets the other qualifications of this part will be ineligible for payment and such applicant's claimed share shown on the application will not be paid.

§ 1429.106 Proof of production.

(a) Producers selected for spot check by CCC must, in accordance with instructions issued by the Deputy Administrator or a designee, provide adequate proof of the fresh and processed asparagus produced and marketed during the 2003 and 2007 crop years.

(b) If adequate proof of marketed production and supporting documentation in support of any application for payment is not presented to the satisfaction of CCC or the FSA county office requesting information, the application and the producers on that application will be determined ineligible for payment.

§ 1429.107 Maximum and final payment rates.

(a) Subject to the funding limits that may apply to the program, the estimated maximum per pound payment rates for fresh market asparagus and for processed market asparagus are:

(1) \$1.06 per pound (\$106.00 per hundredweight) for 2003 crop quantities of asparagus marketed to fresh markets; and

(2) \$1.08 per pound (\$108.00 per hundredweight) for 2003 crop quantities of asparagus marketed for processing.

(b) This program will be administered to assure that total payments do not exceed the available funding. If the total value of payments claimed calculated using the maximum payment rates specified in paragraph (a) of this section exceeds the funding available for each marketing category, less any reserve that may be created as specified in § 1429.109, the payment quantities will be paid at a lower rate determined by dividing the funds available in each marketing category of asparagus, by the payment quantity from applications received by the end of the application period in each marketing category.

(c) In no event will the payment rate exceed the maximum payment rate for each marketing category of asparagus determined in paragraph (a) of this section.

§ 1429.108 Calculation of individual payments.

(a) Producers will be eligible for payment for both fresh and processed asparagus. CCC will calculate the payment quantity of 2003 fresh and processed asparagus for an asparagus farm operation based on the lower of:

(1) Reported production reflected on the application, or

(2) If applicable, determined production.

(b) The payment quantity will be multiplied by the following:

(1) Each asparagus producer's share, and

(2) The payment rate for the fresh or processed asparagus determined as specified in § 1429.107.

(c) If the total value of payments claimed exceeds the available funding, payments to producers are subject to a

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\$100,000 cap per each of the two program marketing categories (fresh and processed) per asparagus producer as defined in this part, not per “person” or “legal entity” as those terms might be defined in part 1400 of this title.

§ 1429.109 Availability of funds.

(a) Payments specified in this part are subject to the availability of funds. The total available program funds will be \$15,000,000 as provided by section 10404 of Public Law 110-246.

(b) Of the available funds, \$7,500,000 are allocated for fresh market asparagus production and \$7,500,000 are allocated to processed market asparagus.

(c) CCC will prorate the available funds by a national factor to ensure that payments do not exceed \$15,000,000. CCC will prorate the payments in such manner as it, in its sole discretion, finds fair and reasonable.

(d) A reserve will be created to handle appeals and errors. Claims will not be payable once the available funding is expended. Any amount of funds reserved for such purposes that are not disbursed for the purpose of correcting errors or omissions, or for the payment of appeals, will not otherwise be distributed to any payment applicants and will be refunded to the U.S. Department of Treasury.

§ 1429.111 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions, or remedies as may apply, an asparagus producer will be ineligible to receive assistance through the Asparagus Revenue Market Loss Assistance Payment Program if the asparagus producer is determined by CCC to have:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, must be refunded with interest together with such other sums as may become due and all charges including interest will run from the date

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of the disbursement of the CCC funds. Any asparagus farm operation, asparagus producer, or person engaged in acts prohibited by this section and any asparagus farm operation, asparagus producer, or person receiving payment as specified in this part will be jointly and severally liable with other persons or operations involved in such claim for payment for any refund due as specified in this section and for related charges. The remedies provided in this part will be in addition to other civil, criminal, or administrative remedies that may apply.

§ 1429.112 Death, incompetence, or disappearance.

(a) In the case of death, incompetency, disappearance, or dissolution of a person or an entity that is eligible to receive payment as specified in this part, an alternate person or persons as specified in part 707 of this title may receive such payment, as determined appropriate by CCC.

(b) Payment may be made for asparagus market losses suffered by an otherwise eligible asparagus producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into an application for the producer or the producer's estate signs the application for payment. Proof of authority to sign for the deceased producer's estate or a dissolved entity must be provided. If an asparagus producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly-authorized representatives must sign the application for payment.

§ 1429.113 Maintaining records.

Producers applying for payment through the Asparagus Revenue Market Loss Assistance Payment Program must maintain records and accounts to document all eligibility requirements specified in this part. Such records and accounts must be retained for 3 years after the date of payment.

§ 1429.114 Refunds; joint and several liability.

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to comply with any requirement or condition for payment in the application or this part, must be refunded to CCC.

(b) A refund required as specified in this section will be due with interest from the date of CCC disbursement and determined in accordance with paragraph (d) of this section and late payment charges as provided in part 1403 of this chapter.

(c) Persons signing an ALAP Program application as having an interest in the asparagus farm operation will be jointly and severally liable for any refund and related charges found to be due as specified in this section.

(d) Interest will be applicable to any refunds required as specified in parts 792 and 1403 of this title. Such interest will be charged at the rate that the U.S. Department of the Treasury charges CCC for funds, and will accrue from the date CCC made the erroneous payment to the date of repayment.

(e) CCC may waive the accrual of interest if it determines that the cause of the erroneous determination was not due to any action of the person, or was beyond the control of the person committing the violation. Any waiver is at the discretion of CCC alone.

§ 1429.115 Miscellaneous provisions and appeals.

(a) *Offset.* CCC may offset or withhold any amount due CCC as specified in this part in accordance with the provisions of part 1403 of this chapter.

(b) *Claims.* Claims or debts will be settled in accordance with the provisions of part 1403 of this chapter.

(c) *Other interests.* Payments or any portion thereof due under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the asparagus crop, or proceeds thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(d) *Assignments.* Any asparagus producer entitled to any payment as specified in this part may assign any pay-

ment in accordance with the provisions of part 1404 of this chapter.

(e) *Appeals.* Appeals will be handled as specified in parts 11 and 780 of this title.

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